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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/761,830	01/20/2004	David J. Lutz	10448-002	4057
29391	7590	12/05/2006	EXAMINER	
BEUSSE WOLTER SANKS MORA & MAIRE, P. A. 390 NORTH ORANGE AVENUE SUITE 2500 ORLANDO, FL 32801			CAJILIG, CHRISTINE T	
			ART UNIT	PAPER NUMBER
			3637	

DATE MAILED: 12/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/761,830

Applicant(s)

LUTZ, DAVID J.

Examiner

Christine T. Cajilig

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 October 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 October 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 1 and 7, and accordingly, dependent claims 2-6 are is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. A written description of the transitioning outside diameter of said neck portion "allows for said neck portion to fit to a variety of ventilation pipe openings" is not present in the specification. The specification describes the transitioning diameter of the neck in paragraph 0045, but does not disclose that the neck portion "allows for said neck portion to fit to a variety of ventilation pipe openings." The specification does implicitly describe the use of the washer for the purpose of accommodating different ventilation pipe openings, but not for the neck portion.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 and 7, and accordingly, dependent claims 2-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1 and 7 are indefinite because the preamble only recites a ventilation pipe protector. However, the body of the claims positively recites a ventilation pipe and defines the dimensions of a ventilation pipe protector with respect to a ventilation pipe. Therefore, it is unclear whether the claims are directing to a combination of the ventilation pipe and the pipe protector or just a pipe protector per se. The Examiner respectfully suggests using the language "the ventilation pipe" within an "adapted to" or functional phrase to clearly define the claim as directed only toward the pipe protector, as the instant claim positively claims the ventilation pipe as part of the structure.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1,2,4, and 7 are rejected under 35 U.S.C. 102(e) as being anticipated by Hernandez (U.S. Pub. No. 2003/0110554 A1).

Regarding claim 1, Hernandez, in Figure 6, discloses a ventilation pipe protector comprising a tubular sleeve (14') having a sleeve outside diameter (d) smaller than a ventilation pipe (50) inside diameter (b), said tubular sleeve for receiving a gas from said ventilation pipe; a hollow head (60) having a head outside diameter (e) larger than said sleeve outside diameter (d) and comprising a plurality of passageways (f) sized to allow egress of the gas from said hollow head and to prevent ingress of animals and debris into said hollow head (60), and a neck portion (58) coupling said hollow head to said tubular sleeve, said neck portion having a transitioning outside diameter (12') from said head outside diameter adjacent said hollow head to said sleeve outside diameter adjacent said tubular sleeve, said neck portion contacting a top opening (g) of said ventilation pipe; whereby said transitioning outside diameter of said neck portion inherently allows for said neck portion to fit to a variety of ventilation pipe openings.

Regarding claim 2, Hernandez, in Figure 6, discloses a ventilation pipe protector wherein said hollow head comprises (60) a convex shaped end (60) opposite an end of said hollow head attached to the sleeve (14').

Regarding claim 4, Hernandez, in Figure 6, discloses a ventilation pipe protector wherein said head outside diameter (e) that is larger than a ventilation pipe (50) outside diameter (c).

Regarding claim 7, Hernandez, in Figure 6, discloses a ventilation pipe protector comprising a tubular sleeve (14') having a sleeve outside periphery (d) smaller than a ventilation pipe (50) inside periphery (b), said tubular sleeve (14') for receiving a gas

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from said ventilation pipe; a hollow head (60) having a head outside periphery (e) larger than said sleeve outside periphery (d) and comprising a plurality of passageways (f) sized to allow egress of the gas from said hollow head and to prevent ingress of animals and debris into said hollow head; and a neck portion (58) coupling said hollow head to said tubular sleeve, said neck portion having a transitioning outside periphery (12') from said head outside periphery adjacent said hollow head to said sleeve outside periphery adjacent said tubular sleeve, said neck portion contacting a top opening (g) of said ventilation pipe; whereby said transitioning outside periphery of said neck portion inherently allows for said neck portion to fit to a variety of ventilation pipe openings.

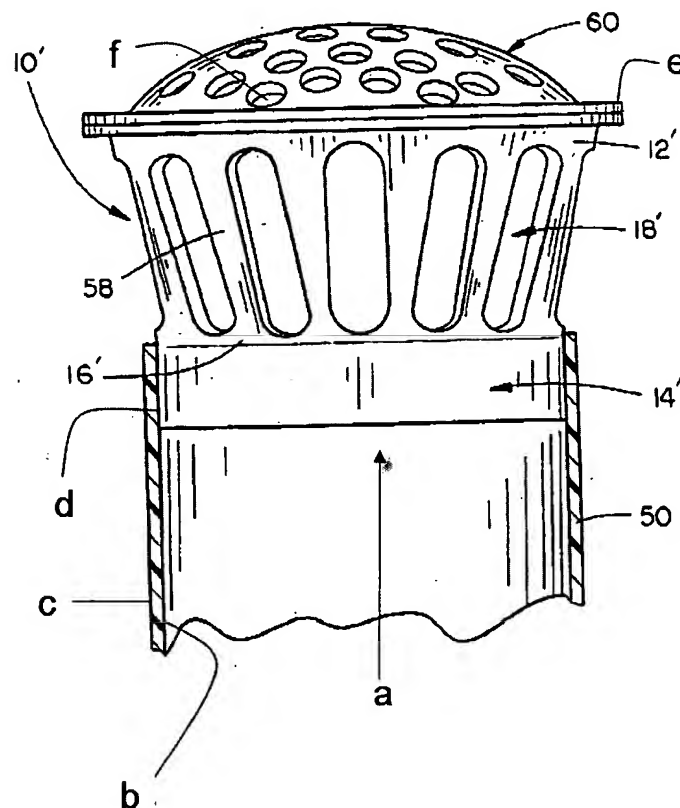


FIG. 6

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

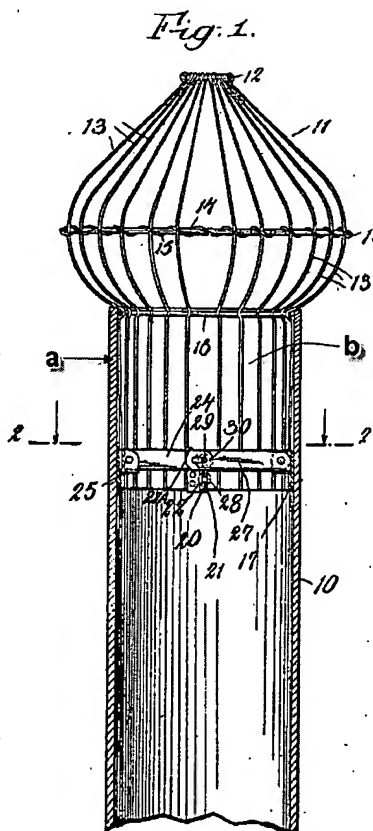
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hernandez ('554 A1) in view of McDonald (U.S. Patent No. 5,291,707). Regarding claim 3, Hernandez discloses the limitations as discussed above, but does not disclose said hollow head comprising an apex end opposite an end of said hollow head attached to the sleeve. However, McDonald in Figure 3, teaches a vent bird protector with a head (36) comprising a peaked end (26) opposite an end of said hollow head attached to the sleeve (39). Therefore, it would have been obvious to a person having ordinary skill in the arts at the time of the applicant's invention to modify the ventilation pipe protector of Hernandez to include a head comprising a peaked end opposite an end of said hollow head attached to the sleeve as taught by McDonald to prevent birds from perching on the stack (Col 1, Ln 58-60).

Claims 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hernandez ('554 A1) in view of Levy (U.S. Patent No. 926,704). Hernandez discloses

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the limitations as discussed above, but does not disclose said tubular sleeve comprising a plurality of passageways sized to allow the gas to flow from the ventilation pipe into said tubular sleeve. However, Levy in Figure 1, teaches a vent strainer with a sleeve (a) comprising a plurality of passageways (b) sized to allow the gas to flow from the ventilation pipe into the sleeve. Therefore, it would have been obvious to a person having ordinary skill in the arts at the time of the applicant's invention to modify the ventilation pipe protector of Hernandez to include a sleeve comprising a plurality of passageways sized to allow the gas to flow from the ventilation pipe into the sleeve as taught by Levy to provide a sleeve that can be readily attached onto the ventilation pipe (Page 1, Ln 9-16).



Levy (U.S. Patent No. 926,704)



Claims 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hernandez ('554 A1) in view of Brenner (U.S. Patent No. 2,768,007). Hernandez discloses the limitations as discussed above, but does not disclose a washer disposed around said tubular sleeve and abutting said hollow head, the washer comprising a washer inside diameter larger than said sleeve outside diameter and smaller than said head outside diameter, and a washer outside diameter larger than a ventilation pipe outside diameter. However, Benner in Figure 9, teaches a washer (20) disposed around the sleeve (18) and abutting a head (f), the washer (20) comprising a washer inside diameter (b) larger than the sleeve outside diameter (d) and smaller than said hollow head outside diameter (a), and an outside diameter (c) larger than the pipe (10) outside diameter (e). Therefore, it would have been obvious to a person having ordinary skill in the arts at the time of the applicant's invention to modify the ventilation pipe protector of Hernandez to include a washer disposed around the sleeve and abutting said hollow head, the washer comprising a washer inside diameter larger than the sleeve outside diameter and smaller than said hollow head outside diameter, and an outside diameter larger than the ventilation pipe outside diameter as taught by Benner to allow any diameter sleeve and head to fit into a pipe with a larger diameter without falling through (Col 2, Ln 30-37).

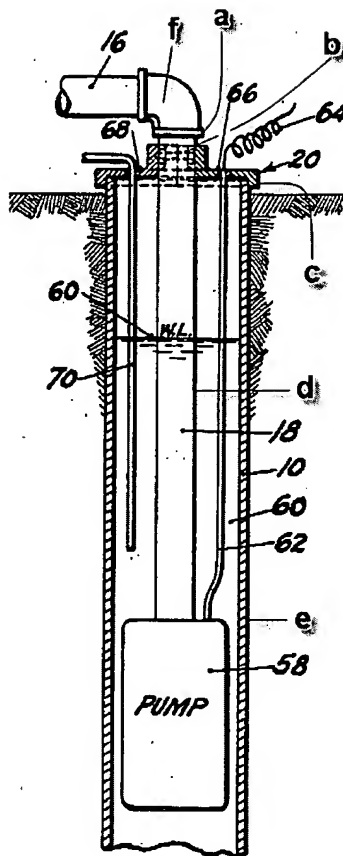


FIG. 9

Brenner (U.S. Patent No. 2,768,007)

### ***Response to Arguments***

Applicant's arguments filed October 30, 2006 have been fully considered but they are not persuasive. As discussed in the rejection under 35 USC 102 above, Hernandez shows a neck portion (58) that contacts a top opening of the ventilation pipe and includes a transitioning diameter to fit a variety of ventilation pipe openings, and thus reads on amended claims 1 and 7, and accordingly, reads on dependent claims 3, 5, and 6. Furthermore, the rejection of claims 1 and 7 under 35 USC 112, second

paragraph stands as the limitation of the ventilation pipe is still positively recited in the claim. See 35 USC 112, second paragraph rejection above.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christine T. Cajilig whose telephone number is (571) 272-8143. The examiner can normally be reached on Monday - Friday from 9am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571)272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

CTC *CTC*  
11/27/06

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